No. 15267

In the United States Court of Appeals for the Ninth Circuit

PERCY HOOD AND GRACE HOOD, HIS WIFE, APPELLANTS

v.

UNITED STATES OF AMERICA, APPELLEE

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

BRIEF FOR THE UNITED STATES, APPELLEE

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CITATIONS

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OPINION BELOW

The district court's oral opinion is set out at R. 59–62.

JURISDICTION

This suit was instituted by appellants and others not involved in this appeal to quiet title to their lands on the Lummi Indian Reservation in the State of Washington. The suit was originally brought in the Superior Court of the State of Washington for Whatcom County (R. 5) and later removed by the United States to the United States District Court for the Western District of Washington, Northern Division (R. 3, 37). Jurisdiction was asserted under 28 U. S. C. Sec. 2410. The United States moved to dismiss for want of jurisdiction as to the lands other

than the appellants and filed a counterclaim as to appellants under authority of the Act of March 18, 1926, 44 Stat. 211, and acts supplemental thereto. Judgment quieting title to the lands of the landowners other than appellants and foreclosing a lien on lands of appellants was entered on May 9, 1956. A timely motion for a new trial was denied June 4, 1956 (R. 87), and notice of appeal was filed August 2, 1956 (R. 87, 88). The jurisdiction of this Court rests upon 28 U. S. C. Sec. 1291.

QUESTIONS PRESENTED

1. Whether Congress had the power to and did impose a lien on these lands by the Act of March 18, 1926, and, if so,

2. Whether the lien embraced charges for operation and maintenance.

STATEMENT

The appellants, and others not involved in this appeal, brought this action to quiet title to certain lands in Whatcom County, Washington, within the original boundaries of the Lummi Indian Reservation.

By the Act of March 18, 1926, 44 Stat. 211, Congress authorized the appropriation of $65,000 for the construction of dikes to reclaim some 4,000 acres of land in and adjacent to the Lummi Indian Reservation (R. 19). Some of the land was Indian land and some was held by private individuals. The act provided that the cost of the project would be distributed equitably among the lands in Indian ownership and those in private ownership which might be benefited by the project. The act imposed a lien on all Indian land

involved for its pro rata share of the construction costs and it provided that no money should be expended until repayment contracts were executed by the owners of the private lands benefited (R. 19–20). These repayment contracts imposed a lien on the lands involved (R. 22). The construction costs were to be paid in annual installments with interest at 4% per annum until the total indebtedness has been paid (R. 20).

When the Act of March 18, 1926, became effective, the appellants were in the process of buying this property from the Indian heirs of Mary-Ya-Him-a-Loo, who had obtained an allotment and patent to the land under authority of the Treaty of January 22, 1855 (R. 25), on December 31, 1884. The patent was in fee simple subject, however, to restrictions upon alienation without the consent of the Secretary of the Interior. On November 10, 1925, the appellants and the Superintendent of the Reservation, Mr. W. F. Dickens, executed a memorandum of sale for the land and the appellants paid down the sum of $2,515 on a purchase price of $10,100 (R. 28–30). At the time of the execution of the memorandum of sale, appellants, the Indian heirs, and Mr. Dickens, as guardian for some of the minor Indian heirs, executed a deed to the land (R. 31, 70). The deed and memorandum of sale were not approved by the Secretary of the Interior until August 10, 1926. At that time a copy of the memorandum of sale was handed to the appellants, but the deed was held in escrow by the Superintendent of the Reservation. After the appellants had paid the notes for the balance of the purchase price in April

1928, the deed was delivered to the appellants (Fdg. IX, R. 72).

On August 19, 1930, the Secretary of the Interior promulgated, pursuant to Section 4 of the Act of March 18, 1926, his "public notice" reciting that he was distributing the total cost of the project among the lands benefited in accordance with a schedule of charges attached to the notice (Fdg. VI, R. 66). The notice appears in 25 C. F. R. Sec. 144 (1949). Thereafter, agents of the Secretary of the Interior have sought without success to secure from the appellants and others repayment contracts (Fdg. X, R. 72–73).

This led to title confusion and on June 8, 1953, the appellants and others holding title to land in "white ownership" who had not signed repayment contracts filed a complaint in the Superior Court for the State of Washington asserting that the waiver of sovereign immunity in 28 U. S. C., Sec. 2410, as to lien claims applied (R. 5–15). The suit was removed to the United States District Court for the Western District of Washington on June 26, 1953 (R. 37). The United States filed answers to all plaintiffs, and filed a counterclaim against appellants claiming a lien on the appellants' property on the ground that at the time of the passage of the Act of March 18, 1926, the property was Indian land and therefore burdened with the lien as provided by the Act (R. 45–49). The appellants answered the counterclaim alleging that their title related back to the memorandum of sale on November 10, 1925, and therefore their land was "private" land and not subject to the automatic lien of the Act (R. 50–58).

The case was heard July 11, 1955. On May 7, 1956, the district court entered its findings of fact and conclusions of law (R. 62–75). The district court held that those plaintiffs, other than appellants, were entitled to have their titles quieted against asserted liens (R. 74). It further held that notwithstanding the memorandum of sale and the payment of a substantial sum on the purchase price, the lands of the appellants were subject to an involuntary lien to secure the construction charges and the operation and maintenance charges (R. 74). It then decreed the foreclosure of the lien as requested in the Government's counterclaim (R. 75). A timely motion for a new trial was denied on June 4, 1956. This appeal followed.

ARGUMENT

Appellants advance their argument generally along two main points; first, the nature of the Indian title and, secondly, that title to the lands effectively passed by various equitable means to appellants prior to the passage of the Act of March 18, 1926. They contend that these two factors relieve their lands from the burden of the lien created by the Act. We will show that the appellants' contentions are wrong and that the trial court was correct, both legally and equitably, in holding that the Act of March 18, 1926, applied to the appellants' lands.

I

The 1926 Act validly imposed a lien upon lands allotted to individual Indians

Much of appellants' brief is devoted to an argument, founded primarily on the fact that the allottee had

been granted a fee title subject to restrictions upon alienation rather than a trust patent, that the lien either was not intended to be or could not, constitutionally, be imposed on the lands in the hands of the Indian heirs. The argument is plainly wrong in both aspects.

A. *The Act of March 18, 1926, imposing a lien on all lands in Indian ownership, covered the lands involved in this case.*—The appellants imply (Br. 29) that the Act may be applied only to tribal lands on the reservation and not to lands that had been allotted to Indians by patents. But the Act refers generally to lands in "Indian ownership" and not merely tribal lands. The normal meaning of that language would be to embrace both categories of Indian property. The legislative history of the Act clearly refutes appellants' narrow definition of ownership.[1] The Senate Report shows that all of the lands on this reservation had been allotted. It is also evident from the report that Congress clearly understood that part of the reservation and adjoining lands were partly in Indian and partly in private ownership. Therefore when the Act plainly imposes a lien on Indian land, it imposed a lien on all allotted Indian land on the reservation. To hold otherwise would render the Act nugatory, since all lands had been allotted.

B. *Congress had power to impose a lien upon lands allotted to individual Indians.*—The nature of the title and particularly the powers reserved to the United States under patents to Indian allottees has

[1] The Senate Report on the bill, S. Rept. 354, 69th Cong., 1st Sess., is printed in full in the Appendix.

long since been settled. In *United States* v. *Gilbertson,* 111 F. 2d 978 (C. A. 7, 1940), the Court, in discussing a patent in fee with restrictions upon alienation said (p. 980):

> * * * The capacity of the United States to sue in its own name, in its own courts to enforce such restrictions as may have been imposed upon the alienation of the allotted lands is no longer open to question. Heckman v. United States, 224 U. S. 413; Goat v. United States, 224 U. S. 458. After the issuance of a patent under statutory provisions limiting the power of the Indian grantee to alienate the land conveyed, power remains in Congress to extend, or to provide that the Executive may extend, in his discretion, the period of limitation, provided such power is exercised prior to the expiration of the period of restriction. United States v. Jackson, 280 U. S. 183; Tiger v. Western Investment Co., 221 U. S. 286; United States v. Bartlett, 235 U. S. 72. The restriction against alienation binds the land for the period restricted, and the death of the allottee and inheritance of the land by his heirs does not operate to remove the restriction, except in cases where Congress has expressly limited the restriction to the lifetime of the allottee. Bowling v. United States, 233 U. S. 528; Gannon v. Johnston, 243 U. S. 108. In general, statutes passed for the benefit of dependent tribes or communities are to be liberally construed, doubtful expressions being resolved in favor of the Indians. Alaska Pacific Fisheries v. United States, 248 U. S. 78; Choate v. Trapp, 224 U. S. 665.

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Appellants' attempt to create a wide difference between the power of Congress over trust allotments and over fee allotments (e. g., Br. 23–24) flies in the face of controlling authority. In *West* v. *Oklahoma Tax Comm'n.*, 334 U. S. 717, 726 (1948), the court said:

> We fail to see any substantial difference for estate tax purposes between restricted property and trust property. The power of Congress over both types of property is the same. *Board of Commissioners* v. *Seber*, 318 U. S. 705, 717; *United States* v. *Ramsey*, 271 U. S. 467, 471. Both devices have the common purpose of protecting those who have been found by Congress to be unable yet to assume a fully independent status relative to property. * * *

See also *Minnesota* v. *United States*, 305 U. S. 382, 386, footnote 1 (1939).

It is equally well settled that the fact that Indians were, under various statutes, made citizens of the United States, in no way limited the power of Congress over their affairs. *United States* v. *Celestine*, 215 U. S. 278 (1909); *Heckman* v. *United States*, 224 U. S. 413 (1912); *Tiger* v. *Western Investment Co.*, 221 U. S. 286 (1911). Regarding the constitutionality of the Act involved in the *Tiger* case the Court states at p. 310:

> Assuming the the defendants in error [Tiger's grantees] are in a position to assert such constitutional rights, is there anything in the fact that citizenship has been conferred upon the Indians, or in the changed legislation of Congress upon the subject, which marks a deprivation of such rights? We must remember in

> considering this subject that the Congress of the United States has undertaken from the earliest history of the Government to deal with the Indians as dependent people and to legislate concerning their property with a view to their protection as such.

and the Court concludes, page 316:

> Upon the matters involved our conclusions are that Congress has had at all times, and now has, the right to pass legislation in the interest of the Indians as a dependent people; that there is nothing in citizenship incompatible with this guardianship over the Indian's lands inherited from allottees as shown in this case; that in the present case when the Act of 1906 was passed, the Congress had not released its control over the alienation of lands of full-blood Indians of the Creek Nation: that it was within the power of Congress to continue to restrict alienation by requiring, as to full-blood Indians, the consent of the Secretary of the Interior to a proposed alienation of lands such as are involved in this case; that it rests with Congress to determine when its guardianship shall cease, and while it still continues it has the right to vary its restrictions upon alienation of Indian lands in the promotion of what it deems the best interest of the Indian.

The following year, 1911, the Supreme Court had to determine if the United States had capacity to sue in its own courts to enforce the restrictions against alienation of allotted lands. In *Heckman* v. *United States,* 224 U. S. 413 (1912), the Supreme Court decided that the United States did have the

power to sue to enforce these restrictions. The court in that case discusses the history of the relationship between the United States and the Cherokee Indians. It states that restrictions on alienation were "an essential part of the plan" of individual allotment of tribal property, p. 436. And it further held that these restrictions were a continuance of the guardianship which the United States had exercised from the beginning. It stated that the continuance of this guardianship was in the national interest.

> *This national interest is not to be expressed in terms of property, or to be limited to the assertion of rights incident to the ownership of a reversion or to the holding of a technical title in trust.* When, in 1838, patent was issued to the Cherokees providing that it was subject to the condition that the granted lands should revert to the United States if the Cherokee Nation became extinct or abandoned them, neither the rights nor the duties of the United States were confined to the reversionary interest thus secured * * *. "A transfer of the allotments is not simply a violation of the proprietary rights of the Indian. It violates the governmental rights of the United States" (pp. 437–438). [Emphasis supplied.]

Thus the appellants' view that the Indian heirs of Mary-Ya-Him-a-Loo possessed such a title as to put it beyond the power of Congress to change, and an attempt to change it on the part of Congress is void and unconstitutional, is not supported by the cases. They rely mainly on the decisions of Judge Hanford in *Ross* v. *Eells,* 56 Fed. 855 (N. D. Wash., 1893),

and *United States* v. *Kopp,* 110 Fed. 160 (W. D. Wash., 1901), and the decision (not Judge Hanford's) in *Eastman* v. *United States,* 28 F. Supp. 807 (W. D. Wash., 1939).

Judge Hanford in the *Ross* and *Kopp* cases is under the erroneous impression that the allotment and the granting of citizenship to the Indians completely removed the United States from any control over the land and the Indians. On appeal the Circuit Court reversed the *Ross* case, *Eells* v. *Ross,* 64 Fed. 417 (C. A. 9, 1894), holding that the granting of land to Indian allottees and granting of citizenship to the same Indians did not revoke the reservation and that the restriction against alienation was not inconsistent with citizenship.

Later, in 1901, in *United States* v. *Kopp,* 110 Fed. 160 (W. D. Wash., 1901), in a prosecution for selling liquor to an Indian on the same Puyallup Reservation, Judge Hanford noted the fact that he had been reversed in the *Ross* case because the land involved was within the boundaries of the reservation. Nevertheless, he held that since a considerable part of the patented land had been sold the reservation had been abolished. The subsequent Supreme Court cases, *supra,* set at rest any possible doubts as to the error of Judge Hanford's view.

The appellants cite certain language of *Eastman* v. *United States,* 28 F. Supp. 807 (W. D. Wash., 1939), to support the proposition that the federal government could not interfere with an Indian's use of his allotment and particularly the court's theory that "Any

Act which excludes the allottee from full enjoyment of the timber on his land, is an interference with his right of ownership" and the Secretary is without power to regulate regarding the sale of timber on these allotments.

The error of appellants' argument has already been demonstrated by this Court when it reversed the *Eastman* case, *United States* v. *Eastman*, 118 F. 2d 421 (C. A. 9, 1941), certiorari denied, 314 U. S. 635 (1941). This Court held that the power given to the Secretary of the Interior, by the Act of June 25, 1910, 36 Stat. 855, 25 U. S. C. A. Sec. 406, to make regulations regarding the proceeds to be realized from the sale, with the consent of the Secretary of the Interior, of timber on an Indian allotment held in trust, extended to requiring selected cutting. It was held that the "power to condition the consent of the Secretary or to prescribe the terms upon which it will be given is rather obviously implied" (p. 424).

It is interesting to note that in this case the Indian allottees object to a charge that the Secretary imposed, incident to the sale of the timber. This fee was to be covered into the Treasury as miscellaneous receipts. The Indians asserted that their property is immune from charges of this sort by virtue of the Treaty of July 1, 1855, 12 Stat. 971. This Court stated that it found nothing in the treaty which could be thought to limit the power of Congress in this respect (p. 425).

The constitutional power of Congress to impose upon the allotments in the Lummi Reservation the expenses of the improvement involved, is we submit, perfectly clear.

II

Equitable considerations cannot be invoked to pass title to appellants prior to approval by the Secretary of the Interior and delivery of the deed to the appellants

Appellants assert that because of various equitable doctrines, title to the land involved here passed to them on November 10, 1925, prior to the passage of the Act of March 18, 1926, and prior to the approval and delivery of the deed by the Secretary of the Interior. These equitable doctrines do and should apply in certain cases involving the sale of real estate. But they have no application here. In the first place they cannot apply since the Secretary of the Interior was without the power to grant a greater title than that authorized by Congress. As we have shown Congress had imposed a lien on this land before the date the Secretary gave his approval. Congress referred to lands in "Indian ownership" at the date of the Act and made no provision for pending but not consummated sale negotiations. It is clear that the Secretary could not fly in the face of this action by Congress and grant a title free of this lien. That is what the appellants attempt to accomplish here.

The appellants argue that the memorandum of sale was an executory contract and that title passed to them by the doctrine of equitable conversion. The one case cited by them, *Brill* v. *Stiles,* 35 Ill. 305 (1864), does not involve restricted land so it obviously does not aid the appellants here. To have any validity at all this argument must presuppose two things: first, that the parties to the contract were capable of performance at that time and, second, that nothing

remained to be done but the payment of money. Both are absent in this stage of the transaction. The Indian heirs were under a disability and they did not have a title that they could pass on November 10, 1925, and approval by the Secretary of the Interior was required by treaty and set out in the memorandum of sale itself (R. 29) before title could be conveyed to the appellants. Thus, it is only after approval of the memorandum and the deed by the Secretary of the Interior that the Indian heirs did have a title that they could convey.

The appellants next rely on the equitable doctrine of relation back (Br. 44–50). This unusual doctrine is invoked by the courts in order to do justice and the courts realize they are resorting to legal fiction when it is used. The cases cited by appellants to support them show the type of fact situation in which the courts feel they should use this legal fiction. The facts of those cases are generally that the Indian grantor dies before approval by the Secretary and his heirs sue to recover the property from his grantees or his assigns. It is clear that in situations like that the doctrine should be applied. The doctrine does not apply if rights of third parties have intervened superior to the one claiming under the deed. *Lykins* v. *McGrath*, 184 U. S. 169, 173 (1902). Here the Congress, which as we have shown, *supra*, pp. 6–12, had control over the land, enacted legislation concerning the land which it considered beneficial. See Senate Report No. 354, accompanying H. R. 60, 69th Cong., 1st Sess. The report states: "Most of the land within

the project covered by this bill is of very little value in its present state, but if diked and drained as contemplated it is estimated after such improvements the value of these lands will run from $200 to $450 per acre." Also in a letter to the Chairman of the House of Representatives Committee on Indian Affairs the Secretary of the Interior states: "The reclamation scheme involves two separate units and will be accomplished by the construction of dikes. One unit is to prevent the tidewaters of Lummi Bay from overflowing part of the lands, while the other unit is to accomplish a similar purpose by preventing the Noonsack River from overflowing the remaining area of the lands. These lands are exceedingly fertile and their reclamation will greatly benefit the Indians by providing adequate farm areas for them." This letter was made part of the report. Therefore, it is clear that a situation does not exist here where the interests of justice would best be served by employing the fictional doctrine of relation back. We feel that the contrary would result.

The appellants next contend (Br. 51) that the United States is estopped from imposing a lien on this land. The doctrine of estoppel clearly cannot be applied here since the appellants knew, or should have known, that no title passed until approval of the deed by the Secretary, and the action of government agents before that time in entering into a memorandum of sale cannot curtail the power of Congress to legislate regarding the lands under its control.

Thus the various equitable considerations relied on by appellants must fail. Conversely, the equities lie

with the United States since, as we have shown, the action taken by Congress was to improve the land and thereby raise its value. The appellants should pay their fair share of this improvement. Therefore, we submit that this Court does not have the power to negative an action by Congress regarding lands under its control.

III

The appellants are liable for maintenance charges imposed on the land by Congress

Appellants assert that the record is "devoid of any foundation whatsover for the imposition of any charge for operation or maintenance" (Br. 56). However, Congress has on several occasions, 44 Stat. 856, 46 Stat. 1129, 47 Stat. 832 and 1608, 49 Stat. 1772,[2] appropriated various amounts for "further construction" and "flood damage." It required that these damages be "reimbursable." It is clear that it was contemplated that this reimbursement would be paid by assessments against the landowners whose lands were burdened with a lien. This necessarily must be so since there was no one else to make reimbursement. Since we have shown, *supra,* that these lands are burdened with a lien, it follows that the appellants are liable for their pro rata share of the reimbursement of these appropriations.

[2] These will be set out in the Appendix.

CONCLUSION

For the above reasons the decision of the court below should be sustained.

Respectfully,

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FEBRUARY 1957.

APPENDIX

[69th Congress, 1st Session, Senate, Report No. 354]

FOR THE PURPOSE OF RECLAIMING CERTAIN LANDS IN INDIAN AND PRIVATE OWNERSHIP WITHIN AND IMMEDIATELY ADJACENT TO THE LUMMI INDIAN RESERVATION

MARCH 11, 1926.—Ordered to be printed

Mr. DILL, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany H. R. 60]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 60) for the purpose of reclaiming certain lands in Indian and private ownership within and immediately adjacent to the Lummi Indian Reservation, in the State of Washington, and for other purposes, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts are fully set forth in House Report No. 271, Sixty-ninth Congress, first session, which is appended hereto and made a part of this Report.

[House Report No. 271, Sixty-ninth Congress, first session]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 60) for the purpose of re-

claiming certain lands in Indian and private ownership within and immediately adjacent to the Lummi Indian Reservation, in the State of Washington, and for other purposes, having considered the same, report thereon with a recommendation that it do pass without amendment.

The Lummi Indian Reservation has an area of 12,651 acres, all allotted. It is situate in the northwest corner of the State of Washington. At one time the Nooksack River crossed it and emptied into Lummi Bay. A large part of the lands comprising the northerly end of the reservation consists of low or marsh land, the result of alluvial deposits from the Nooksack River. Later this river broke through its banks, changing its course, and emptying into Bellingham Bay. Its present outlet into Bellingham Bay is at a point about 5 miles east of its former mouth. Approximately 3,400 acres within the reservation of low river bottom land and 600 acres adjacent to its eastern boundary is subject to annual overflows and is mainly covered by water from the river during high-water periods. A portion of the Indian allotments is also covered by salt water on the west side of the reservation during high tides. The reservation has under its jurisdiction 460 Indians.

Most of the land within the project covered by this bill is of very little value in its present state, but if diked and drained as contemplated it is estimated after such improvements the value of these lands will run from $200 to $450 per acre.

The report of the Secretary of the Interior on this bill is attached hereto and made a part of this report.

DEPARTMENT OF THE INTERIOR,
Washington, January 29, 1926.

HON. SCOTT LEAVITT,
Chairman, Committee on Indian Affairs,
House of Representatives.

MY DEAR MR. LEAVITT: This is in further reference to your letter of January 6, 1926, relating to H. R. 60 (69th Cong., 1st sess.).

This bill has in mind reclaiming approximately 4,000 acres of land, of which 3,400 acres are within the Lummi Indian Reservation, in Washington, the remaining area being in private ownership immediately adjacent to the reservation on the east. The reclamation scheme involves two separate units and will be accomplished by the construction of dikes. One unit is to prevent the tidewaters of Lummi Bay from overflowing part of the lands, while the other unit is to accomplish a similar purpose by preventing the Nooksack River from overflowing the remaining area of the lands. These lands are exceedingly fertile and their reclamation will greatly benefit the Indians by providing adequate farm areas for them.

This bill is identical with H. R. 11635 (68th Cong., 2d sess.), upon which favorable report was submitted to the chairman of the Committee on Indian Affairs, House of Representatives, under date of February 14, 1925.

The Director of the Bureau of the Budget has advised that this is not in conflict with the financial program of the President.

Very truly yours,

HUBERT WORK.

In the former report above referred to appears the following:

"This, as will be noted, is principally an Indian project. The bill provides for repayment of the con-

struction cost by the Indians under appropriate rules and regulations to be promulgated by the Secretary of the Interior and creates a lien against all such land benefited, which lien shall be recited in any patent issued for any particular tract prior to the reimbursement of the total amount assessable against same.

"Restriction is contained in section 3 of the bill relative to expending any of the funds authorized to be appropriated on behalf of the lands in private ownership until after appropriate repayment contracts shall have been executed by the landowners. This provision, it is believed, assures repayment of such landowners' proper share of the cost.

"Section 4 of the bill provides for an interest charge on deferred installments owing by the private landowners.

"The bill appears to amply protect the Government's interests, and I shall be pleased to see it receive favorable consideration by your committee and the Congress."

Supplemental legislation regarding the diking project created by the Act of March 18, 1926.

1. Second Deficiency Act of 1926, 44 Stat. 841, at page 856: Reclaiming lands on the Lummi Reservation, Washington—(reimbursable): For construction of dikes and other necessary work incidental thereto for the reclaiming of approximately 4,000 acres of land in Indian and private ownership within and immediately adjacent to the Lummi Indian Reservation, in the State of Washington, as authorized by the Act of March 18, 1926, and under the terms and conditions of, and reimbursable as provided in, said Act, fiscal year 1927, $65,000.

2. Interior Department Appropriation Act of 1932, 46 Stat. 1115, at page 1129: For further construction

work, including the placing of tide gates on the Lummi diking project, Washington, $3,600, reimbursable as provided for by the Act of March 18, 1926 (44 Stat. p. 211), and the public notice issued pursuant thereto.

3. Department of the Interior Appropriation Act of 1934, 47 Stat. 820, at page 832: For repairing flood damage, Lummi diking project, Washington, $8,000, to be immediately available and reimbursable.

4. Second Deficiency Act of 1933, 47 Stat. 1602, at page 1608: Reclaiming lands, Lummi Reservation, Washington: For an additional amount for repairing flood damages, Lummi diking project, Washington, fiscal years 1933 and 1934, $17,600, reimbursable: Provided, that no part of this appropriation shall be expended for the benefit of any lands in private ownership until an appropriate repayment contract in form approved by the Secretary of the Interior shall have been properly executed by the landowners whose lands may be benefited thereby.

5. Department of the Interior Appropriation Act of 1937, 49 Stat. 1757, at page 1772: Washington, Lummi, $20,000 reimbursable; Makah (dikes and flood gates), $5,000, reimbursable; miscellaneous (domestic and stock water and garden tracts) $20,000.

U. S. GOVERNMENT PRINTING OFFICE: 1937